STATE OF MICHIGAN

COURT OF APPEALS

PATRICE WEAVER, Plaintiff-Appellant,	UNPUBLISHED September 13, 2005
v	No. 254074 Court of Claims
THIRD JUDICIAL CIRCUIT COURT, Defendant-Appellee.	LC No. 03-000025-MK

Before: Cooper, P.J., and Bandstra and Fitzgerald, JJ.

PER CURIAM.

In this breach of contract case, plaintiff appeals as of right the trial court's grant of summary disposition in favor of defendant. We affirm.

Plaintiff was employed by defendant as a clerk from 1987 to 1998. In that position, plaintiff was a member of a collective bargaining unit represented by the American Federation of State, County and Municipal Employees—Local 3309 (AFSCME), and was classified as "Clerk III" for salary purposes under the collective bargaining agreement (CBA). Effective November 2, 1998, plaintiff was promoted to the non-union position of purchaser. Before leaving the union, plaintiff negotiated an agreement to cover her return to a union position should the need arise. The terms of that agreement were allegedly set forth in a letter from the incoming president of the union to defendant's human resources administrator. The letter provided in part:

> The Union hereby stipulates that if in the future for any reason the position that Ms. Weaver is acquiring is determined to be an unnecessary function of the Courts, or she is no longer a necessity in her new capacity, Ms. Patrice Weaver may return to the bargaining unit/local in a capacity equal to that which she has acquired, in salary as well as status.

Defendant's executive court administrator wrote "OK" on the bottom of the letter and initialed it.[1]

[1] We note that the writing appended by the executive court administrator was dated eleven days before the date of the letter itself.

In February 2002, plaintiff was notified that the purchaser position was being eliminated due to a budget deficit, and that she would be returned to a union position. She again became a member of the AFSCME local collective bargaining unit and was classified as "Clerk III," resulting in a yearly pay reduction of approximately $12,500 from the purchaser position. Plaintiff filed a breach of contract claim arguing that the letter in issue entitled her to maintain the salary level she attained in the position of purchaser when she returned to the bargaining unit. The court granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(4), (7), and (10).

Plaintiff first argues that the court erred in granting summary disposition in favor of defendant under MCR 2.116(C)(4). Summary disposition is appropriate under MCR 2.116(C)(4) where "[t]he court lacks jurisdiction of the subject matter." "Whether the trial court has subject-matter jurisdiction is a question of law that this Court reviews de novo." *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43, 49-50; 620 NW2d 546 (2000). Defendant argued below that the case should be summarily dismissed because plaintiff failed to exhaust her administrative remedies under the CBA. See *Blair v Checker Cab Co*, 219 Mich App 667, 671; 558 NW2d 439 (1996). While the court did not specifically address this argument in its opinion and order, it noted that it was granting summary disposition in part under MCR 2.116(C)(4).

"When reviewing a motion under MCR 2.116(C)(4), this Court must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show there was no genuine issue of material fact." *Bock v General Motors Corp*, 247 Mich App 705, 710; 637 NW2d 825 (2001). Here, because plaintiff's breach of contract claim is based on the letter in issue, the CBA is not implicated. See *Whitehouse v Hoskins Mfg Co*, 113 Mich App 138, 141; 317 NW2d 320 (1982). And because the letter does not provide for a grievance procedure, the court's grant of summary disposition under MCR 2.116(C)(4) was inappropriate.

However, we disagree with plaintiff's contention that the court erred in granting summary disposition in favor of defendant under MCR 2.116(C)(10) based on its determination that defendant's executive court administrator did not have the authority to enter into the alleged contract.[2] We review de novo a trial court's decision on a motion for summary disposition brought under MCR 2.116(C)(10). *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by

---

[2] "If summary disposition is granted under one subpart of the court rule when it was actually appropriate under another, the defect is not fatal and does not preclude appellate review as long as the record permits review under the correct subpart." *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). Additionally, plaintiff apparently does not contest the trial court's grant of summary disposition in favor of defendant under MCR 2.116(C)(7); therefore, we decline to address the issue. See *Mahnick v Bell Co*, 256 Mich App 154, 164; 662 NW2d 830 (2003).

the parties must be considered in the light most favorable to the nonmoving party. *Id*. When the evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A genuine issue of material fact exists when the record leaves open an issue on which reasonable minds could differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

It is well settled that an agency relationship exists when there is a manifestation by the principal that the agent may act on his account. *Meretta v Peach*, 195 Mich App 695, 697; 491 NW2d 278 (1992). "The authority of an agent to bind a principal may be either actual or apparent." *Alar v Mercy Mem Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995). Here, the chief judge of the Third Judicial Circuit has authority over administrative, personnel, and financial matters in the operation of the court. MCR 8.110; Administrative Order No.1998-5; *Judicial Attorneys Ass'n v State of Michigan*, 459 Mich 291, 294; 586 NW2d 894 (1998), aff'd in part, vacated in part on other grounds 460 Mich 590; 597 NW2d 113 (1999).[3]

While it is undisputed that defendant's executive court administrator acted as an agent for defendant in a variety of administrative capacities, the record does not establish that the administrator had the actual authority to enter into a contract of the nature asserted by plaintiff. Indeed, the chief judge of the Third Judicial Circuit at the time relevant to this case specifically averred that to the extent the letter in issue could be read as a separate agreement outside of the CBA, it was outside the administrator's authority. The judge stated that he did not delegate the authority to enter into any employment agreements without approval, and noted that he did not approve this alleged agreement. Moreover, while MCR 8.110(C)(6) permits the chief judge to "delegate administrative duties to a trial court administrator or others," his power to delegate authority related to employee contracts is limited to the collective bargaining context. Administrative Order No. 1998-5, § VIII.

Plaintiff's argument that the administrator was acting with apparent authority also fails. "Apparent authority may arise when acts and appearances lead a third person reasonably to believe that an agency relationship exists." *Meretta*, *supra* at 698-699. However, "[a]pparent authority must be traceable to the principal and cannot be established by the acts and conduct of the agent." *Id*. at 699. Here, plaintiff has not shown any acts of the chief judge that would reasonably have led her to believe that the executive court administrator had the authority to make unilateral salary decisions like the one she claims was made here. Prior agreements allowing individuals transferring to an unrepresented position to reenter the collective bargaining unit at the status and salary they earned while in their former represented position do not support plaintiff's contentions.

In any event, we conclude that the plain language of the letter in issue does not support

---

[3] Originally, the powers of a chief judge for the Third Judicial Circuit were conferred by the Legislature in MCL 600.593a. However, our Supreme Court held that subsections (3) through (10) of the statute were unconstitutional. *Judicial Attorneys Ass'n*, *supra* at 294. "Under separate order," the Court enacted Administrative Order No.1998-5, which conferred authority over personnel matters to the chief judge. *Id*.

plaintiff's position. Significantly, the letter references the purchaser position with the present tense verb form "is acquiring," while referencing the status and salary to be returned to by using the present perfect tense verb for "has acquired." The present perfect verb tense is used to "express an action or state completed at the time of speaking." *Merriam Webster's Collegiate Dictionary* (10th ed). As such, the letter limits the status and salary upon return to that achieved as of its drafting, which was before plaintiff's employment as a purchaser. Therefore, because there was no genuine issue of material fact, the trial court properly granted summary disposition in favor of defendant under MCR 2.116(C)(10).

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald

I concur in result only.

/s/ Jessica R. Cooper